

TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
June 7, 2006
Approved with corrections 7/5/06

Board Present: Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Frank Muddle, Dan Remian, PB Attorney Greg Cunningham, CEO Scott Bickford and Secretary Crystal Robinson

Board Absent: None

1. Call to Order: Chairman Remian called the meeting to order at 7:02 pm and a roll call was taken. Mr. Remian read aloud a letter from James Tower, who complained that Crystal Robinson should not be allowed to take notes for the PB because she had written a letter to the PB in opposition to his project. Mr. Remian said the notes Mrs. Robinson took were for assistance in writing the minutes, which Mrs. Robinson did not do, and said he saw no conflict of interest.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Kiskila, to keep Crystal taking notes this evening and any other time the Planning Board needed her.
Carried 5-0-0

Mr. Remian asked Mrs. Kalloch, in reference to the same letter, to make copies of all meeting minutes from October 2005 through May 2006 for Mr. Tower.

2. Minutes of 5/4/06: Various PB members asked for corrections to the 5/4/06 minutes.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Ellis, to approve the minutes of the 4/5/06 meeting, subject to making the corrections as noted and clarification of the lot numbers on Page 6.
Carried 5-0-0

3. Communications: The chairman read aloud a 5/10/06 letter from applicant James Tower, in which he requested that the PB ask Gartley & Dorsky to proceed with the survey work on Meduncook Plantation Subdivision [MP]. Mr. Remian said he had been waiting for Mr. Tower's check and determining if Mr. Tower had correctly stated, at the last meeting, that hiring the firm would be a conflict of interest. Mr. Tower confirmed that a possible merger with the firm was no longer an issue. Mr. Ellis asked if the Board's offer to find another surveyor was now rescinded and Mr. Remian reported that Mr. Cunningham and Cliff Goodall, Mr. Tower's attorney, had come to an agreement in regards to Gartley & Dorsky. Mr. Remian said Mr. Goodall had sent a check for \$2,500 to be put in escrow for the survey costs. Mr. Cunningham speculated that Mr. Goodall's reference (in his letter to the Board) to Lot #10 being under contract might be intended to suggest it was not a possible alternative route for a road to Lot #26. The chairman also read a letter from the Cushing Board of Selectmen, stating that they had passed a motion that a public hearing should be held on the Robbins Mountain Subdivision [RM].

4. Sherrill Arey, Map 7, Lot 64, parking lot expansion in Shoreland Zone: Mr. Arey said he had a permit that needed to be changed and asked the CEO to explain. Mr. Bickford said he had issued a permit to fill and excavation of more than 10 cubic yards outside the 75' setback. The CEO said it was also a requirement of the PB to issue parking lot permits and Mr. Arey would be extending his parking lot. Mr. Remian said this concerned a commercial fishery, which allowed the parking lot to be within 25' of the shore. The CEO said that Items #26 and #35 ran parallel and any ambiguity needed to be cleaned up.

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, to approve the application.
Carried 5-0-0

5. James Wiley, Sr., representing Blake Tovin, Map 4, Lot 50, application to remove a deck during renovations, then replace deck and shed. Property located on Vinal Road in Shoreland Zone: Mr. Wiley said he wanted to remove an 8' X 32' deck in order to dig a drainage ditch and jack the building up by 17". Mr. Ellis asked where the deck lay in relation to the setback. The CEO said he had visited the site and the deck was at the

rear of the building within the 75' setback. The PB confirmed that everything would be returned to its previous position, with no increase in square footage.

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, to approve the permit.
Carried 5-0-0

6. Scott Kingsley, Map 5, Lot 17-1, Bayberry Lane, application to build a 12' X 20' shed to store boat supplies, in the Shoreland Zone: Mr. Kingsley said he had come before the PB last year with this request. He stated that he had an old building within the SZ, which he wanted to remove and replace. The new building (12' X 16') would still be within the SZ, but further back than the old building (16' X 20'). The applicant said Mr. Bickford had visited the site last year and determined that the location Mr. Kingsley had chosen would mean the shed would extend 12' into the SZ. Mr. Kingsley said this location would enable him to preserve a large maple tree. Mr. Bickford confirmed this and said the shed would be more conforming than the present one.

ACTION: Mr. Muddle made a motion, seconded by Mrs. Kalloch, to approve the application.
Carried 5-0-0

7. Craig Lord, continuation of application to build on property located in Hornbarn Hill Subdivision: Mr. Lord was present and represented by his attorney, Jonathan Hull. Mr. Hull confirmed that the PB had received a new application this evening and said he had site plans to present. He said that he and PB attorney Cunningham had discussed the issues with this application. Mr. Hull said that Cushing's Shoreland Zone [SZ] ordinance, which represented Resource Protection [RP] districts, seemed not to include Map 6, Lot 22, of which Mr. Lord's Lot 6 was a subdivision. Mr. Hull said the ordinance was specific that the SZ map was "illustrative" only and the text of the ordinance overrode the map. He said that the ordinance did not identify Lot 22 as being in RP. Mr. Hull said the question then became the issue of the 20% slope and whether RP affected all or part of Lot 22.

Mr. Hull provided a map showing two setbacks: the first from the cove itself and the second from the marsh wetlands. A tentative building envelope was also noted on this map. Mr. Hull then provided another map that illustrated a surveyor's on-site inclinometer slope indication. He stated that the area of 20% or less slope was only ½ acre and said time and money constraints had prevented calculating whether the 2 contiguous acre minimum requirement was met. Mr. Hull also presented the Board with a subsurface wastewater license application and a draft exchange agreement (exchanging Lot 8 for Lot 6) between Mr. Tower and Mr. Lord as evidence of the applicant's ownership of the property.

Mr. Ellis said he disagreed with the premise of the relevance of these maps to reestablishing the district. He said Section 13 of the SZ ordinance applied to how the districts were established by the town and the description of the slopes was used in determining the district the town voted to incorporate into the ordinance. He said it was the responsibility of the town, not the applicant, to set the district. Mr. Ellis said both MMA and DEP agreed with his interpretation of Section 13 and said that an applicant could not establish districts. He concluded that the determination of slopes was not to be made by the applicant and the map indicated RP on Lot 22. Mr. Hull reiterated that the lot was not listed as RP in the ordinance. Mrs. Kalloch said that Rich Baker of the DEP said Cushing's map did stand. Mr. Remian said that, while that was true for most towns in Maine, Cushing's ordinance said the map was illustrative only; however, Mr. Remian felt that did not remove the map as a determination tool. He said his research showed that any district in the SZ was included in SZ until changed by the town.

Mr. Hull said he did not believe that Mr. Baker believed that because a portion of a tax map lot was in RP that the entire lot was in RP. Mr. Remian agreed. Mr. Hull then asserted that Mr. Baker's opinion was based on a series of court cases and he had provided the PB with a copy of the only Maine Supreme Court case dealing with this issue. He said the decision in that case made it clear that the language of the ordinance controlled what had precedence and that meant Lot 22 was not in RP. He said he had provided the 20% slope determination map only because he knew the Board had requested such in the past. Mr. Remian quoted Subsection 13(A)(3) of the SZ ordinance as stating that the SZ included, but was not limited to, the lot numbers listed. Mr. Hull responded that that very language opened the door for the PB to make a decision within that scope, though he did not think the applicant had the burden of proving his property was not in RP. There was further discussion about the town's RP map versus the language of the ordinance.

Mr. Remian asked Mr. Cunningham if he thought the Attorney General [AG] could shed any light on the issue. The PB's attorney responded that Mr. Baker had told him he had been unsuccessful in trying to elicit a response from the AG's office. Mr. Hull commented that his calls to the AG's office had not been returned. Mr. Ellis asked Mr. Cunningham if Subsection 9B of the SZ ordinance was relevant because it appeared to be talking about the zone

itself. Mr. Cunningham said he disagreed with the MMA letter referred to earlier. In this letter, he said, MMA says it's clear in the provision, because it makes reference only to normal high water line and the upper edge of wetlands, that it is only intended to be a function of setback, not a definition of district. Furthermore, the initial sentence in the letter referred to the difficulty in determining those lines, but Mr. Cunningham felt steep slopes and flood zone areas should be added to the list in the ordinance. He said the language was intended to be a justification for making the map illustrative and was, thus, very imprecise. For that reason, Mr. Cunningham said he disagreed with MMA's determination. The concept he gleaned after reading the entire ordinance, which he acknowledged was a strange and unique one, was that the town had an imprecise map and had not wanted to spend the money for overlay lot maps to identify the steep slopes. In lieu of that, the town had generally identified things on the map and made specific language. The effect was to put everyone in Cushing on notice that if their land had one of the features it might be regulated under the SZ as a RP district. He said this was not the preferable way to handle the subject because it risked having the PB or Zoning Board of Appeals get into a zoning role.

Mr. Ellis asked if Lot 22 not being listed in the ordinance meant the depiction on the map could not be used. Mr. Cunningham replied that it did not and he disagreed with Mr. Hull as to the meaning of the listing of lots. He said a property not being on the list was not a presumption that it was not in the RP; it merely meant that the listed lots were thought to be in the category. The map had been created to give general reference to areas that were likely to have the RP feature, Mr. Cunningham said, while specific determination of the line was to be done by a field determination. Mr. Bickford asked if, when the RP districts were put on the map, the landowners had to be notified. Mr. Cunningham agreed they would have been notified and would have had 30 days to contest the determination. Since that time had passed, Mr. Cunningham said the best way to clear it up would be to clean up the map and make it more specific so the landowners were on notice. The more difficult way would be to take evidence and, if there were a conflict between the map and what the applicant presented, have the CEO make a zoning determination, which could then be appealed to the Zoning Board of Appeals. Mr. Cunningham said that staff made these determinations in many towns, but it should only involve shifting a line and not removing a lot from a district.

Mr. Ellis asked if Mr. Cunningham were talking about boundary lines that were already established, which he felt were the lines that had to be proven to the PB. Mr. Cunningham said typically it would be the limits of the 250' zone that needed to be dealt with; the side boundaries were less likely to be in contention. Mr. Ellis said he saw no mention in Section 13 that an applicant had to define features within a district. Mr. Cunningham replied that Section 13 referred to the full 250' zone being divided into districts. He interpreted the ordinance to say that all areas not in the Commercial Fisheries District, RP District or Limited Commercial District were deemed to be in the Limited Residential District. He questioned why such a provision would be included if they were all mapped anyway, unless there might not need to be some interpretation involving two districts within one block on a given lot. In response to a question from the CEO, Mr. Cunningham said it was only in reference to the RP district that there was any question whether the lots listed were definitive. He concluded that, because there was uncertainty about the RP, the drafters of the ordinance wanted a fallback for those areas that did not fit into the RP.

Mr. Ellis said he saw Section 13 as describing how to establish the districts. He felt there was another section concerning interpretation and applicants could not establish districts. Mr. Cunningham agreed that the town, rather than an applicant, ultimately made the zoning line determination. However, the language of Section 13 was very clear in saying, "Areas believed to meet the distinguishing definitions are shown on the map." Chairman Remian noted the last sentence on Page 9, "The district designation for a particular site shall be determined from the official Shoreland Zoning map and the district descriptions in Section 13." Mr. Cunningham said Cushing's ordinance was also unusual in that it said that in a conflict between provisions the less restrictive would apply.

Mr. Hull commented that there was no way any landowner could know if his property was included in RP on the town map without specific notification at the time the ordinance and map were adopted. Mr. Bickford questioned whether the town could do something less stringent than what DEP had accepted as RP in Cushing's ordinance. Mr. Hull agreed that the DEP had adopted the ordinance after town approval and the map did not control. He said the language appeared not to include Lot 22; however, there was language that gave the PB the right to approve a site plan with a specific building location within it. Mr. Hull said he felt a surveyor's delineation, which he had presented, was as definitive as possible. He said there was a very sound purpose in making an overlay because you did not want to build on a steep slope; it did not matter if there was a plateau 10' back from the steep slope. He said it made no sense to take a whole lot out because a tiny portion of it might be in RP. Mr. Ellis said the PB had been asked to produce overlays because of this type of problem. Mr. Muddle said the PB had before it written language that left this lot out of RP, a map that was not definitive and a surveyor's evidence to depict the RP within the lot. He felt this met the burden of proof for a factual basis for making a decision. Mr. Muddle said if the PB started projecting an area of a lot to cover the entire lot there would be major problems in town. Mr. Cunningham said he didn't think anyone was suggesting that the restrictions would apply to the entirety of the lot, but only to the

entirety of the 250'. Mr. Muddle responded that applying it to a depth of 250' would affect a lot of lots. Mr. Ellis said there were lots in north Cushing where bluffs came up and then the land was flat and the entire 250' was RP, but really it should only be the first 50'.

Mr. Ellis asked if the list of lots in the ordinance was what prevailed but Mr. Cunningham said the list did not claim to be all-inclusive and he considered Section 3 to be a provision in itself. Mr. Ellis asked if there were a conflict between the state's and Cushing's ordinances, one could assume that the absence of language was less restrictive. Mr. Cunningham said the absence of the lot in question on the list simply said that any areas within the SZ where there were two or more contiguous acres that met the sustained slope definition were, by definition, RP; examples are following, but it is not an exclusive list of lots. Mr. Ellis stated that the state and town were in conflict because the town said the map was illustrative only while the state said that the map controlled. Mr. Cunningham said the map was a provision of the ordinance and the language of the ordinance was a series of provisions as well; Cushing's ordinance said look to the language first, but also consider the map. Mr. Cunningham said the town had provided an ordinance that the state had approved, which they would not have done if there were a conflict that was not allowable.

Mr. Remian asked Mr. Cunningham if the PB approved this application and asked for additional guidance from the AG's office that would set precedent for other lots in town. Mr. Cunningham replied that it would not set legal precedent but would set procedural precedent because the Board needed to be consistent in the treatment of applicants. Mr. Remian said he had heard conflicting interpretations from several sources and he felt the town would be on the hook if the PB approved the application. Mr. Ellis asked what relevance the earlier mentioned Maine Supreme Court decision (that the map should prevail) had to this application. Mr. Cunningham said that many people were quick to identify that case as justification for any circumstance, regardless of what the ordinance said, as standing for the proposition that you always look to the map first; however, if one read the case it was clear the court was saying that the text of the ordinance tells you that the map prevails. The relevant part of the decision, he said, was that it said the language of the ordinance should guide the PB. Mr. Ellis then questioned whether DEP's Rich Baker knew the language of Cushing's ordinance when he wrote his letter determining that it was the whole 250'. Mr. Bickford and Mr. Cunningham thought Mr. Baker did. Mr. Cunningham said he had given Mr. Baker a hypothetical in which the PB agreed with an interpretation that, even though the map said that an entire area on a certain lot was one district (RP) and, based on field determination, they decided that the features that would make it RP were only in 150' of that total 250' zone and the applicant wanted to develop within the first 100' and provided evidence that there were not RP features within that last 100'. He had asked if the PB approved the application in such a case what position would the DEP take? Mr. Baker had responded that the owner of the property would not be faced with an enforcement action as long as there was evidence supporting the lack of RP. Mr. Cunningham said it was not the PB's job to determine if Cushing's ordinance was constitutional or legal. Mr. Bickford said he had had a similar conversation with Mr. Baker, who said he would send a letter to Cushing suggesting the ordinance language be cleared up.

Mr. Muddle stated that, were the PB establishing a procedural precedence, he felt this was a good way to do it; interpreting the ordinance to mean the full depth of the SZ would create a nightmare situation, he said. He felt the applicant had provided clarifying evidence as to the location of the RP and that the building site did not encroach on it. Mr. Hull responded that he was not asking the PB to determine if this lot was RP; rather, the applicant was asking the Board to approve a building permit for a specific building site. Chairman Remian asked Mr. Hull to confirm that the colored area on his map was the only part of the applicant's lot that had slopes of 20% or greater, which he did. Mr. Remian asked if the PB could make a time-constraint approval pending a response from the AG and Mr. Cunningham said it could not because it would be unfair to the applicant. Mr. Ellis said the night's discussion had led him to believe the language of the ordinance was not nearly as clear as the MMA and the DEP had led him to believe. Mrs. Kalloch ascertained that the wetlands, 75' setback and 25' sidelines were depicted on the plan.

Mr. Remian called for a motion on the application. Mr. Cunningham said that, in order to be consistent with the ordinance, the PB would need to follow procedure to ensure it was not the body making the interpretation of district boundaries. This could be done by 1) finding that this was not inconsistent with the map, 2) urging the CEO to make the decision or 3) asking the applicant to obtain a zoning interpretation from the proper entity and then come back to the PB for a decision on the application. Mr. Bickford said he did not consider himself a professional person who could decide between 19% and 21% slope; he would need outside help. He also questioned turning pervious land to impervious by placing a structure on it because the runoff would go down the slope into RP. Mr. Cunningham said the ordinance was not intended to create a buffer around the steep slope area, but only to protect the steep slope itself. James Tower said the impervious area for houses on the lots was considered and the impact was included in the storm water management plan that was approved by the DEP.

Mr. Ellis said Page 26 (findings for approval) of the ordinance said nothing about determining districts; therefore, the PB's approval would not determine any boundaries. Mr. Cunningham responded that, though the ordinance did not say that, there could be an argument that if what was presented to the PB was inconsistent with the map, the PB had made a zoning determination. Mr. Ellis then asked how the PB could avoid making a procedural precedent. Mr. Cunningham replied that the PB could turn the decision over to the CEO right now or ask the applicant to apply to the CEO. The CEO could then choose whether to make a decision; if he refused, the applicant would go to the Zoning Board of Appeals. Mr. Remian asked Mr. Cunningham about Subsection E(5) (Exceptions) on Page 26. The attorney said it would not qualify under 5(A) or (B). Mr. Hull said the applicant was not asking the Board to act under special exceptions because he could not meet the requirements. He was prepared to stipulate that his map, including the RP, represented how the applicant would govern the piece of property. Mr. Remian asked why the proposed building location infringed on the RP. Mr. Hull said the building would not be within the RP; the site would be staked and the CEO would be asked to approve the location of the building. Mr. Remian asked why the RP line on the plan did not follow the slope and Mr. Hull deferred to the surveyor. Surveyor Drew Grenier explained the methods used to make the plan.

Mr. Muddle stated that in Section 16(E)(3) the requirements in A through H were not applicable to this application and, therefore, the application should be processed. Mr. Cunningham disagreed, saying he thought they did apply and a specific finding should be made for each, based on the evidence before the PB. He said the standards should not be considered, however, until the PB was comfortable with the zoning issue. Mr. Remian asked Mr. Bickford if he would be willing to make the determination. The CEO replied that, if the Board believed that RP was the full 250', he would be willing to follow the direction of the Board.

ACTION: Mr. Muddle made a motion, seconded by Mrs. Kalloch, that defining of the district did not include the entire Shoreland Zone depth.
Motion and second were withdrawn

Mr. Cunningham was concerned that this motion was interpretation, which should be made by the CEO or the ZBA. Mr. Hull noted that the ordinance said the CEO could elect to have a qualified professional make the determination if he did not want to do it himself; he suggested that Mr. Grenier, who had produced the applicant's map, was a qualified professional surveyor. Mr. Cunningham said the CEO could delegate to a private individual the right to make the determination, yet he thought it was legally suspect. Mrs. Kalloch said this discussion had gone on and on and she would like to see it put to bed with a motion subject to the final determination by the CEO or other individual. Mr. Ellis asked Mr. Cunningham if he was correct that the state and the CEO shared enforcement and, thus, it was appropriate that the DEP made the determination. The PB attorney responded that such was not provided for in the ordinance and he doubted whether the DEP and/or the applicant would agree to it. Mr. Remian said he thought the CEO should make the determination. Mr. Bickford said he thought the SZ ordinance was confusing and needed a lot of repair, but he would be willing to come to terms with a surveyor and try to find a flat spot for a structure. When Mr. Hull asked if Mr. Bickford would accept Mr. Grenier as the surveyor to make the determination, the CEO said he would prefer an outside surveyor who had no connection to this application.

Mr. Bickford said he thought the SZ ordinance was very confusing and needed repair. He felt that the full 250' SZ should not be violated and was reluctant to set a precedent. However, the CEO said the applicant deserved the benefit of the doubt, so he would be willing to work with an outside surveyor to try to find a flat spot for Mr. Lord's house. Mr. Hull then asked if the PB would consider approval with the condition that the building be located outside the indicated slope area, as determined by an outside surveyor agreed upon by the CEO and the applicant. Mr. Cunningham said he would not recommend the Board do that. Rather, he would prefer Mrs. Kalloch's suggestion of a motion that would provide for approval with a condition that a zoning determination ultimately be made that allowed the RP district to encompass less than the full 250' of the property.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Muddle, to approve, subject to conditions that include a zoning determination from the appropriate authority that concludes that the Resource Protection District located on the property does not extend to the entire 250' of the Shoreland Zone and that the proposed building location is outside of the Resource Protection District, as defined by the Shoreland Zone ordinance.
Carried 3-2-0 (Mr. Ellis and Mr. Remian voted against)

Mr. Remian said he felt the statements from DEP and MMA, as well as his interpretation of the SZ ordinance and map, intended to include the entire 250' of the district. Mr. Ellis said he was reluctant to be re-establishing districts.

Chairman Remian then directed the Board to Page 26 of the Town of Cushing SZ ordinance, to the findings of fact related to Subsection E(3).

ACTION: Mr. Muddle made a motion, seconded by Mr. Ellis, that, based on the evidence presented on the location of the septic and well, the applicant had met the requirements for maintaining safe and healthful conditions (3.a.).
Carried 5-0-0

Mrs. Kalloch asked how the effect of runoff could be determined without seeing an actual plan of the house with its proposed runoffs and storm water plans, especially so close to RP. Mr. Ellis said they had the proposed location of the building and driveway and Mr. Lord confirmed that his house would be 30' X 40', excluding the garage. Mrs. Kalloch said she thought that was insufficient evidence in light of the recent discussion of driveways and RP. Mr. Remian said he understood her point, but Mr. Muddle noted the building was 120' or more from the shore and he felt the ground would absorb the runoff. Mr. Lord said his house would have gutters and Mr. Ellis said it would be the same as any other house in town that close to the shore.

ACTION: Mr. Muddle made a motion, seconded by Mr. Kiskila, that the building location and soil conditions presented met the requirements for not resulting in pollution, erosion or sedimentation to surface waters (3.b.).
Carried 4-0-1 (Mrs. Kalloch voted against)

ACTION: Mr. Muddle made a motion, seconded by Mr. Ellis, that the applicant had met the requirements for disposing of wastewater (3.c.).
Carried 5-0-0

ACTION: Mr. Muddle made a motion, seconded by Mr. Ellis, that there was nothing in the application that indicated any activity that would adversely impact those areas and the applicant had met the requirements (3.d.).
Carried 5-0-0

Mr. Ellis asked the applicant to confirm that he intended to recognize the restrictions of the shaded area on his plan. Mr. Lord replied that he would if the shaded area was determined to be in the SZ.

ACTION: Mr. Muddle made a motion, seconded by Mr. Ellis, that since this area is within the Shoreland Zone, those requirements are mandated by the Shoreland Zone Acts and the applicant will meet them.
(3.e.).
Carried 5-0-0

The Board determined that Subsections 3(f), 3(g), 3(h) and 3(i) were not applicable to this application. The chairman then moved on to Section 15 (Land Use Standards) and asked Mr. Cunningham to indicate which subsections should be reviewed. CEO Bickford confirmed that the application met the requirements under A(1), A(2) and A(4).

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, that the applicant had met the requirements of Section 15(A)
Carried 5-0-0

The CEO said he believed the applicant would meet the provisions of Subsection 15(B)(1), subject to the zoning determination. Mr. Cunningham stated it was implied that approval was subject to Mr. Lord's 5/27/06 plan for Lot 6. Mr. Bickford said, in regards to 15(B)(2), 15(B)(3) and 15(B)(4), that he would suggest the building was under the Shoreland Zoning Act and he would require a reference point for future elevation, prior to construction. Mr. Ellis asked him to clarify this and Mr. Bickford said that all sections of 15(B) fell under the CEO's jurisdiction and were not applicable at this time.

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, that because the applicant hadn't provided any evidence demonstrating compliance with the standards of Section 15(B), the approval would be subject to compliance and verification by the Code Officer.
Carried 5-0-0

The Board determined that Subsections 15(C, D, E and F) were not applicable for the Board at this time. Mr. Bickford said the flag drive area was depicted on the plan.

ACTION: Mr. Muddle made a motion, seconded by Mrs. Kalloch, that the applicant had met or would be required to meet the conditions of Section G.
Carried 4-0-0 (Mr. Kiskila was out of the room)

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, that Section 15(I) was conditional on meeting best management practices as inspected by the CEO.
Carried 5-0-0

Mr. Cunningham pointed out that anything approved was conditional upon a zoning determination, as cited in an earlier motion.

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, that the project would be subject to the standards in Section 15(O) and CEO verification.
Carried 5-0-0

ACTION: Mr. Muddle made a motion, seconded by Mr. Ellis, that the project would be subject to the standards in Section 15(P) and CEO verification.
Carried 5-0-0

ACTION: Mr. Muddle made a motion, seconded by Mr. Ellis, that data submitted on the septic test site indicated that the requirements for soil conditions (Section 15Q) would be met.
Carried 5-0-0

ACTION: Mr. Muddle made a motion, seconded by Mr. Kiskila, that it had been indicated that the requirements for Section 15(R) would be met.
Carried 5-0-0

The chairman stated that the Board now had a conditional approval for the project. Mr. Cunningham said the Board should provide the applicant with a determination that provided the approval and listed the conditions. Mr. Remian asked Mrs. Robinson to provide her notes regarding this to the CEO.

ACTION: Mr. Muddle made a motion, seconded by Mrs. Kalloch, that, based upon the Board's positive findings with respect to the standards in Section 16 (E)(3) and the performance standards contained in Section 15, the permit was granted subject to the identified conditions.
Carried 5-0-0

Chairman Remian noted that it was 10:00 pm and the PB by-laws prohibited taking on new business after 9:30 pm without a Board vote. Mr. Tower said he would like to make a proposal regarding the Meduncook Plantation expansion.

8. Amendment to Meduncook Plantation Subdivision, Map 6, presented by James Tower: Mr. Tower introduced himself as a registered professional engineer in the State of Maine, owner of Engineering Dynamics, engineer of record for this project and the sole member of Cushing Holdings LLC and Last Resort Holdings LLC. Mr. Tower congratulated the PB on grappling with a difficult issue and thanked Mr. Cunningham for eloquently making points that Mr. Tower had tried to make in the past. He then said he would like the PB to take action to engage a surveyor. If the PB agreed to this, Mr. Tower would agree to table his two other agenda items if they could be dealt with at a special PB meeting in two weeks. Mrs. Kalloch said she was concerned about the people who had attended this evening for the Robbins Mountain Subdivision application. Mr. Ellis said that application would require a public hearing, so interested parties would have the opportunity to speak. Mr. Muddle agreed that that would be the only opportunity for the public to make testimony. He asked if the Board should formally recognize the letters that had been received concerning the Robbins Mountain Subdivision. Mr. Remian said letters had been written to the PB, to him and to the Selectmen and Mr. Cunningham recommended formally accepting them into the record.

ACTION: Mr. Muddle made a motion, seconded by Mr. Ellis, to accept into the record the letters that had been submitted to the Board, its chairman, the CEO and the Selectmen.
Carried 5-0-0

Mr. Ellis asked if it would be appropriate to discuss the letter mentioned at the beginning of the meeting, concerning the Board's recommendation that Mr. Tower consider an alternate route to Lot 26.

ACTION: Mr. Remian made a motion, seconded by Mr. Muddle, to extend the meeting for thirty minutes.
Carried 5-0-0

Attorney Wayne Crandall, representing Mr. Tower, stated that his client's primary objective this evening was the issue of the agreed-upon surveyor. He said Mr. Tower had provided the funding for this independent surveyor and the chairman confirmed he had received his check. Mr. Crandall said Mr. Tower would like to see that survey initiated before further addressing the issue of Lot 26, since the results of the survey would determine its disposition. Mr. Remian said the Board had unanimously approved a motion to obtain the services of Gartley & Dorsky Engineering and Surveying. Mr. Remian said the proposal outlined the parameters of the survey and needed only to be signed by Mr. Tower and the CEO. The CEO asked the PB members for their permission to sign the agreement, which they gave.

Chairman Remian suggested that, in order to eliminate any questions, Gartley & Dorsky be asked to show the limit of RP in that area. Mr. Tower asked for clarification and Mr. Remian said the SZ map showed two RP zones, one on each side of the LR zone, and asked that the survey show the limits of the RP areas if they existed. Mr. Tower asked if he meant RP or areas that exceeded 20% slope; he said it was his contention that there was no area greater than 2 contiguous acres. Mr. Remian said the survey would end when the slope was less than 20%. Mr. Tower said he thought the survey should start at the peninsula and work toward areas that were greater than 20%, but also pursue and follow the benches and plateaus. He said it was his understanding that the result would be a two-color map, one color designating a slope of less than 20% and another color a slope of 20% or more. Mr. Ellis questioned the boundaries of the survey and Mr. Remian read the following from the letter of agreement, "We will run the topography toward Lot 26 until the ground is obviously sloping less than 20%." Mr. Bickford said he would ask Gartley & Dorsky to move forward as quickly as possible.

There was a brief discussion concerning the definition of sustained slope and Mr. Cunningham said that the surveyor should refer any such questions to Rich Baker at the DEP. Mr. Muddle said the purpose of the survey was to answer the question of whether slopes were over or under 20%. He said they knew there were ledge areas, which might not be over 20%, breaking up the slopes although overall they were 20%. He said he hoped the existence of such breaks would not prevent the survey from answering the question before the Board. Mr. Remian said he and Mr. Bickford had told Mr. Dorsky they wanted it to be clear. Mr. Tower asked if the Board was asking for the break areas to be delineated and Mr. Muddle responded that he was not because the overall slope was the question. Mr. Remian said he had asked for an easily understood color depiction that followed the subdivision and SZ ordinances. Mr. Bickford said he had given Mr. Dorsky copies of Cushing's SZ and subdivision ordinances and directed him that any questions should be referred to the DEP.

Mr. Remian asked Mr. Tower if he felt his Robbins Mountain Subdivision application was complete. Mr. Tower said there was some information that had not been supplied and the wetlands across from Mr. Robbins' house had only been delineated today. Mr. Ellis said there was also information requested by the Board for the Meduncook Plantation application that had not yet been submitted. Additionally, he said a land use permit application would be necessary for Lot 26, as Mr. Tower and Mr. Goodall had agreed at the April meeting. The chairman asked Mrs. Kalloch to provide Mr. Tower with copies of the PB minutes from October 2005 through May 2006.

There was discussion about setting a meeting for the Robbins Mountain Subdivision. A meeting was set for Wed., June 21, at which time the application's completeness would be determined; the public hearing would be held on July 5.

9. Adjournment: Mr. Ellis made a motion, seconded by Mr. Kiskila, to adjourn the meeting at 10:32 pm.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey
(Transcribed from the tape recordings and notes of Crystal Robinson)

